

INTERNAL REVENUE SERVICE  
2 CIRCLE  
MONTEREY PARK, CA 91755

DEPARTMENT OF THE TREASURY

DATE: MAY 16 1996

EMPLOYER IDENTIFICATION NUMBER  
[REDACTED]

CASE NUMBER:  
[REDACTED]

PERSON TO CONTACT  
[REDACTED]

CONTACT TELEPHONE NUMBER:  
[REDACTED]

REFER REPLY TO:  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear Applicant,

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code.

FACTS:

The information submitted discloses that you were incorporated on [REDACTED].

Your Articles of Incorporation state that your specific purpose is to, "acquire, maintain and manage the park property and to exercise the rights and powers and perform the duties and responsibilities of the declarant according to that certain [REDACTED] recorded in [REDACTED]..."

Your application 1024 states that the purpose of the corporation is to, "maintain and manage common area property in the [REDACTED], which is open to the general public. The



	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Code							
Surname							
Date							

Form 1937 Correspondence Approval and Clearance

Department of the Treasury/Internal Revenue Service



common area has been acquired by the corporation by assignment at no cost. Each owner of a lot in [REDACTED] shall be and become a member with the acquisition of a lot without necessity of documentation. Each owner is required to notify the association in writing of any transfers or acquisitions. There are no classes of membership."

Your application states that upon dissolution of your organization, "The organization's assets will be distributed to the members as a rebate of assessed membership dues, fees, or assessments." Per your application 1024, your only source of support is "membership dues, fees and assessments."

**ISSUE:**

Does the organization qualify for exemption as an organization described in section 501(c)(4) of the Internal Revenue Code (IRC)?

**LAW:**

Section 501(c)(4) of the IRC exempts from Federal income tax an organization which fosters the common good and general welfare of the community and reads in part as follows:

"(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."

Treasury Regulation section (Reg.) 1.501(c)(4)-1(a)(2)(ii) states that an organization will be considered to be operated exclusively for social welfare purposes if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community, i.e., primarily for the purpose of bringing about civic betterment and social improvement. Reg. 1.501(c)(3)-1(c)(1) states, "An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals."

Reg. 1.501(a)-1(c) states, "The words 'private shareholders or individuals' in section 501 refers to persons having a personal and private interest in the activities of the organization."

Revenue Ruling 74-99 which modifies Revenue Ruling 72-102 provides that in order to qualify for exemption under IRC 501(c)(4), a homeowners' association must serve a "community" which bears a reasonable relationship to an area ordinarily identified as governmental, it must not conduct activities directed to the exterior maintenance of private residences; and the common areas it owns and maintains must be for the use and enjoyment of the general public.



In Rev. Rul. 74-17, the Service distinguished its treatment of homeowners' associations, as described in Rev. Rul. 72-102, from that of condominium associations. Rev. Rul. 74-17 held that while condominium associations and homeowners' associations provide similar services, a substantial distinction existed between them. Specifically, the essential nature and structure of condominium ownership, both statutory and contractual, is inextricably and compulsorily tied to the owner's acquisition and enjoyment of the property. Basic condominium ownership necessarily involves common ownership of all condominium property in the development, the care and maintenance of which would constitute the provision of private benefit to the owners to a degree that would disqualify it from exemption under Internal Revenue Code 501(c)(4).

In *Comm. v. Lake Forest Inc.*, (1962, CA4) 305 F2d 814, exemption was denied a nonprofit corporation that erected low-rent public housing where the tenant members obtained an equity in the units through monthly payments and all assets were distributed to the members on dissolution. The benefits rebounded chiefly to the private purchasers of the housing units.

In *United States v. Pickwick Electric Membership Corp.*, 158 F2d 272 (6 Cir. 1946), the Court stated that a civic organization is described as embodying "the ideas of citizens of a community cooperating to promote the common good and general welfare of the community."

The Court in *Erie Endowment v. United States*, 316 F2d 151 (1063), while acknowledging the difficult task in arriving at a specific definition of "civic organization," stated that "the organization must be a community movement designed to accomplish community ends."

#### ANALYSIS AND CONCLUSION:

The concept of social welfare includes the provision of benefits to the community at large. The providing of benefits to a narrow group of recipients, in most instances, is not considered as promoting social welfare. Therefore, a social welfare organization may not, if it is to qualify for tax exemption, be operated for the private benefit of the organization's membership or other select groups of individuals or organizations.

The rationale for tax exemption for homeowners' associations was invoked by Congress when enacting the specific tax exemption for a homeowners association. Thus the Senate Finance Committee observed, "Since homeowners' associations generally allow individual homeowners to act together in order to maintain and improve the area in which they live, the committee believes it is not appropriate to tax the revenue of an association of homeowners who act together if an individual homeowner acting alone would not be taxed on the same activity. See Public Law 94-938, 94th Cong., 2nd Sess. (1976), at 394.



Just as in Rev. Rul 74-17, the essential nature and structure of your industrial park ownership, the rights, duties, privileges and immunities of the members of an association of commercial property owners are contractually tied to the owners' responsibility to the property. The property in question must be maintained by the property owners, not the government. Consequently, allowing exemption under IRC 501(c)(4) would confer a private benefit on the owner/members.

Your organization does not serve an entire "community" of homeowners but a small group of members who are lot owners in a commercial business park. Your private business park does not constitute a "community" which bears a reasonable recognizable relation to an area ordinarily identified as governmental. Although there is a large community of homes which abuts your business park, it is not a part of your business park and therefore not a part of your property, but a separate community. Your organization is not one of homeowners but one of business lot owners. You are not maintaining the property for the use and enjoyment of the general public but for the convenience of persons who patronize your business park and for the economic benefit of the owners of the business park. The dissolution provision of your Articles of Incorporation, which distributes remaining assets to your members as excess fees, dues, or assessments, (not to the good of the general public), constitutes inurement and/or private benefit to your members. Your organization is not operated exclusively for the promotion of social welfare nor is it an association of homeowners.

It is the position of the Internal Revenue Service that your organization does not qualify for exemption from Federal income tax under Internal Revenue Code section 501(c)(4) as you are primarily engaged in operating a commercial business park for the private benefit of your lot owner/members.

Accordingly, you are required to file income tax returns on Form 1120, U.S. Corporate Income Tax Return, annually with your respective Service Center.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018. Please note the instructions for signing on the reverse side of this form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information in support of your position as explained in the enclosed Publication 892. You will be contacted to arrange a date for a hearing. The hearing may be held at the Office of Regional Director of Appeals, or if you request, at a mutually convenient District Office. A self-addressed envelope is enclosed.

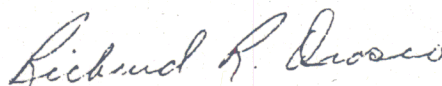
If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a



timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become the final determination.

If you have any questions, please contact the person whose name appears on the heading of this letter.

Sincerely,

  
Richard R. Orosco  
District Director

Enclosure:  
Publication 892  
Form 6018